

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

INNOVATION LAW LAB,

Plaintiff,

v.

Civ. No. 2:22-cv-00443-SMV-KRS

**U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT,**

Defendant.

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Innovation Law Lab (Law Lab) respectfully moves this Court to issue a preliminary injunction enjoining U.S. Immigration and Customs Enforcement (ICE) from unlawfully withholding records that must be produced to Plaintiff in response to its pending Freedom of Information Act (FOIA) request, which included a request for expedited processing. Plaintiff meets the criteria for injunctive relief and asks the Court to order that Defendant produces all non-exempt responsive records to Plaintiff within 30 days of the Court's order, or by such date as the Court deems appropriate.

The grounds for this motion are set forth in the accompanying Memorandum in Support of Plaintiff's Motion for a Preliminary Injunction. Pursuant to Local Rule 7.6(a), Plaintiff respectfully requests that the Court schedule a hearing on this motion at the Court's earliest convenience and sets forth the following facts in support of its request:

Plaintiff filed its FOIA request to Defendant on May 3, 2022. Plaintiff requested expedited processing and provided a detailed explanation as to how the request meets the criteria set forth in 6 C.F.R. § 5.5(e)(1). Defendant designated Plaintiff's request as FOIA request no. 2022-ICFO-14041 and acknowledged receipt of the request on May 3, 2022. Defendant has not

granted or denied Plaintiff's request for expedited processing of Plaintiff's FOIA request. Since May 3, 2022, Defendant has not communicated at all with Plaintiff regarding Plaintiff's FOIA request nor has Defendant produced any responsive records to Plaintiff.

Plaintiff seeks records relating to ICE's response to an exceptional and urgent alert publicly issued on March 18, 2022 by the U.S. Department of Homeland Security Office of Inspector General (DHS OIG) recommending that ICE immediately remove all individuals in ICE custody from the Torrance County Detention Facility (TCDF) in Estancia, New Mexico. The DHS OIG documented critical understaffing at TCDF and serious health and safety issues that posed immediate risks to people detained there. Instead of abiding by the DHS OIG's recommendations, ICE disputed the impartiality and accuracy of the DHS OIG's findings, refused to depopulate TCDF, and instead transferred in additional people to TCDF. ICE has not communicated to the public any concrete steps that the agency is taking to ensure the health and safety of individuals detained in its custody at TCDF. The agency's resistance to scrutiny and oversight regarding TCDF has generated intense attention by the media and policymakers.

Plaintiff seeks these records both to assist on-the-ground efforts on behalf of individuals detained in ICE custody at TCDF and to ensure real-time public accountability for ICE. Responsive records will directly inform the day-to-day work of Plaintiff and its partner organizations at the El Paso Immigration Collaborative, a multi-organizational initiative that provides individuals detained in ICE custody at TCDF with access to pro bono counsel. At present, there is an urgent need for records that shed light on how ICE is addressing critical understaffing at TCDF and sanitation issues that pose an imminent threat to the life and physical safety of individuals detained in ICE custody at the facility. Plaintiff will make immediate use of responsive records in its pro bono direct service work, including in advocating for individuals

detained at TCDF, defending their due process rights, and advising them on how to exercise their rights and use various channels including grievances to raise concerns about dangerous conditions at the facility.

Further, Plaintiff urgently seeks these records in order to engage in meaningful and effective advocacy in a fast-moving and fluid situation. The DHS OIG inspection of TCDF is ongoing and if Plaintiff's FOIA request is not timely processed, Plaintiff will be obstructed in its mission of seeking to hold Defendant accountable for detaining individuals in dangerous, punitive conditions at TCDF. Plaintiff's organizational purpose encompasses holding federal immigration agencies accountable through the pursuit of transparency, oversight, impact litigation, and public awareness-raising to influence policymaking in the United States. Such accountability is particularly necessary in this context, given that Defendant has accused the DHS OIG inspection team at TCDF of bias and Defendant has a well-documented history of failing to ensure safe and humane treatment of those in its custody, which has resulted in extensive human rights abuses, due process violations, and irreparable harm for detained individuals. Defendant's resistance to the DHS OIG recommendations regarding TCDF has already caused widespread and exceptional media interest, and there is an urgency to inform the public about ICE's inadequate response to the serious health and safety issues documented by the DHS OIG at TCDF. Plaintiff's effectiveness in shaping public opinion and policymakers' actions during this critical time period is contingent on its ability to timely access and disseminate the requested records.

For the above reasons, Plaintiff respectfully requests that the Court schedule a hearing on this motion at the Court's earliest convenience.

Submitted: June 13, 2022

Respectfully submitted by:

/s/ Rebecca Sheff
Rebecca Sheff
New Mexico Bar No. 159065
ACLU OF NEW MEXICO
P.O. Box 566
Albuquerque, NM 87103
T: (505) 266-5915
F: (505) 266-5916
rsheff@aclu-nm.org

Christopher Benoit
New Mexico Bar No. 15097
COYLE & BENOIT, PLLC
2515 N. Stanton Street
El Paso, TX 79902
T: (915) 532-5544
F: (915) 532-5566
chris@coylefirm.com

Counsel for Plaintiff

CERTIFICATE OF CONFERENCE

On June 13, 2022, I conferred with Manuel Lucero, Assistant United States Attorney, via email to request the position of the office of the United States Attorney for the District of New Mexico regarding the foregoing Motion. He informed me that the Motion is opposed.

/s/ Rebecca Sheff
Rebecca Sheff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of June 2022, I filed the foregoing electronically through the CM/ECF system and via email courtesy copy to Manuel Lucero, Assistant United States Attorney, with the office of the United States Attorney for the District of New Mexico. The original Complaint and this Motion are being served by summons as of June 13, 2022.

/s/ Rebecca Sheff
Rebecca Sheff